IN THE HIGH COURT OF JUDICATURE AT BILASPUR (CG)

WRIT PETITION NO. 3024 OF 2004

BETWEEN

1. Jogi Lal S/o Ajit Ram, aged about 32 years .

2. Moti Lal S/o Ajit Ram, aged about 28 years .

Both resident of Village Linjir, Tehsil and District Raigarh (CG).

PETITIONERS

A N D

1. The State of Chhattisgarh,
Through the Secretary Department of Revenue,
Mantralay , D.K.S. Building, Raipur (CG).

2. The Board of Revenue, Chhattisgarh,
Through its President,
Bilaspur (CG).

3. The Collector, Raigarh.

4. Sub Divisional Officer (Revenue), Raigarh.

5. Jagmohan S/o Nanki Khadiya r/o Village Linjir, Tehsil and District Raigarh.

6. Uttam S/o Nanki Khadiya, r/o Village Linjir, Tehsil and District Raigarh.

7. Nanhu S/o Louta Jhariya Khadiya, resident of Village Linjir, Tehsil and District Raigarh (CG).

RESPONDENTS

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

1. Particulars of the Petitioners :

As stated in the cause title above .

2. Particulars of the Respondents :

As stated in the cause title above .

3. Particulars of the order against which the petition is made .

The petition is made against the following order.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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# आदेश पत्रक

मामला क्रमांक W.P. 3024/ सन् 2004

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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| | **23.9.2004**<br>Shri Komal Bajpai, counsel for the petitioners.<br>Shri Bhaskar Pyasi, Panel Lawyer for the State/respondent No.1, 3 & 4.<br>The petitioners have preferred this writ petition under Article 227 of the Constitution of India, being aggrieved by the order dated 19.8.2004 passed by the Board of Revenue in Revision Case No.16/A-23/2003-04, whereby the learned Board of Revenue dismissed the revision of the petitioners affirming the order dated 5.1.2004 passed by the District Collector, Raigarh, in Appeal Case No.18/A-23/2003-04 affirming the order passed by the Sub Divisional Officer (Revenue), Raigarh, whereby the S.D.O. (Revenue) held that the petitioners are not Scheduled Tribe, therefore, the sale deed transferring the agricultural land executed by respondents No.5 to 7 herein is void in view of the provisions of Section 170-B of the Land Revenue Code, 1959 (hereinafter referred to as 'the Code').<br>I have heard the learned counsel for the petitioners on admission and learned Panel Lawyer on behalf of the State.<br>Brief facts leading to filing of this writ petition are that the petitioners purchased revenue land from respondents No.5 to 7 herein vide registered sale deed dated 26.4.1988. It is admitted position that respondents No.5 to 7 are Tribe. The petitioners purchased that land admeasuring 1.53 acres of Khasra No.502, Village: Linjir, claiming themselves to be Tribe. Thereafter, respondents No.5 to 7 filed an application before the S.D.O. (Revenue), Raigarh, complaining that the petitioners herein purchased the land in question from them in a deceitful manner claiming themselves as Tribe, whereas they are not Tribe. On the application of respondents No.5 to 7 herein, the S.D.O. | |

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# आदेश पत्रक

मामला क्रमांक W.P. 3024/04 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित - 2 - | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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(Revenue) initiated case under Section 170-B of the Code, and after enquiry and giving opportunity to both the parties, the learned S.D.O. held that the petitioners herein failed to prove themselves to be of Tribe category, in fact they are of Dhobi caste which falls under the Other Backward Classes caste. Aggrieved by the order of the S.D.O., the petitioners filed appeal before the Collector, Raigarh, and in turn, the Collector, Raigarh also dismissed the appeal vide order dated 5.1.2004 against which the petitioners again preferred revision before the Board of Revenue and the Board of Revenue vide the impugned order dismissed the revision.

Perusal of the impugned order reveals that the S.D.O. after giving opportunity, recording the evidence, and based on the revenue record, reached the conclusion that the petitioners failed to prove that they are Tribe by caste, but they are by caste Dhobi which comes under the OBC category. In appeal, the Collector also after perusal of the record affirmed the order passed by the S.D.O. Perusal of the impugned order further reveals that the petitioners only produced the certificate of Sarpanch showing them as Dhoba by caste, whereas, no certificate of Tehsildar was produced by the petitioners. In fact, under the law, the Revenue Officers viz., Tehsildar or the Naib Tehsildar are the competent persons to issue caste certificate after verifying and enquiring into the facts. It has further been mentioned in the impugned order that one of the family members of the petitioners namely, Bhogilal, S/o Ajit Ram, in record of Village: Linjir, has shown his caste as Dhobi. The Patwari Halka also reported vide his report dated 27.12.2001 that that the petitioners herein are by caste Dhobi, and they are original residents of Village: Turkapali, Tehsil: Dabhra, they shifted to Village: Linjir only 20-25 years back.

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# आदेश पत्रक

मामला क्रमांक WP No 3024/04 सन् 200

विरुद्ध

| आदेश का दिनांक आदेश क्रमांक सहित | आदेश हस्ताक्षर सहित — 3 — | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
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Thereafter, the S.D.O. as well as the appellate Court (the Collector) and the Board of Revenue recorded the finding based on the evidence available on record and after appreciation of the evidence.

Learned counsel for the petitioners failed to point out that the above finding of the three Courts is contrary to the evidence available on record, or the evidence on the record is totally misread.

In order to entertain a petition under Article 227 of the Constitution of India, this Court has jurisdiction only when the inferior Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it has or the jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has resulted. The High Court in writ jurisdiction under Article 227 of the Constitution of India cannot covert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character. This view finds support from the judgment of the Hon'ble Apex Court in the matter of **Surya Dev Rai v. Ram Chander Rai and others** reported in **JT 2003 (6) SC 465**.

Therefore, I am of the opinion that the petitioners have failed to make out a case for interference by this Court under Article 227 of the Constitution of India. Hence, the instant writ petition is liable to be dismissed and it is accordingly, dismissed in limine at the admission stage itself.

Consequently, M.(W.)P.No.2638/2004 and I.A.No.6491/2004 stand disposed of.

Sd/-
L.C. Bhadoo
Judge